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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,620	03/24/2004	Jacob Richter	4396-4002US1	7476
27123	7590	03/06/2006	EXAMINER	
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			LOCKETT, KIMBERLY R	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/809,620

Applicant(s)

RICHTER, JACOB

Examiner

Kim R. Lockett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 5, 11, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novo in view of Stavash.

Novo discloses the use of a wind instrument, comprising a head section (26) having a proximal end, a distal end, a side surface and a bore concentrically aligned and extending there through (see figure 8) a mouth opening (32) formed in the side surface of the head section, the mouth opening communicating with the head section bore and having a circumferential diameter, wherein the ratio of the head section bore diameter in the vicinity of the mouth opening and the mouth opening circumferential diameter is about 1.5 to 1 or less; a main section (27) having a proximal end, a distal end and a bore extending there through, wherein the main section bore diameter at the proximal end of the main section is greater than the head section bore diameter at the distal end of the head section; and an intermediate section (16) having a proximal end, a distal end and a bore extending there through (column 4, lines 10-15) the intermediate section bore having a first diameter at its proximal end substantially equal to the head section bore diameter at the distal end of the head section and a second diameter at its distal end substantially equal to the main section bore at the proximal end of the main section, whereby the proximal end of the intermediate section is coupled to the distal

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end of the head section and the distal end of the intermediate section is coupled to the proximal end of the intermediate section, such that the head section bore, intermediate section bore and main section bore are coupled in flow communication (see figure 1). Novo further discloses the use of first and second bore diameters at the head section and the distal end (see figure 8).

3. Claims 2, 6, 12, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novo in view of Stavash.

Novo does not disclose the use of an intermediate section with a conical bore.

Stavash discloses the use of a wind instrument with an intermediate section with a conical bore (column 1, lines 60-65)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Novo to include the conical bore as disclosed by Stavash in order to provide a musical instrument with good intonation.

4. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novo in view of Young.

Novo does not disclose the specific diameter as recited by the applicant.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bore diameter to include the diameter as claimed by the applicant since it has been held that where the general conditions of a claim are

disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Novo to include the bore diameter as disclosed by the applicant in order to provide a variance for airflow.

- a. Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center at 703-872-9306.

For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC)** whose telephone number is **800-786-9199**. Assistance is also available on the Internet at www.uspto.gov.

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett** whose telephone number is **(703) 308-7615**, after 2/3/04 my new number will be **(571) 272-2067**. The examiner can normally be reached on Monday through Friday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on (571) 272-2800 ext. 33.


KIMBERLY LOCKETT
PRIMARY EXAMINER